IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.2283 OF 2006
IN
SUIT NO.1819 OF 1988

M/s. Rafique Abdul Malik Tejani & Ors. ..Plaintiffs.
Vs.
The Oriental Insurance Co. Ltd. & anr. ..Defendants.
....
Mr. Piyush Shah for the Plaintiffs.
Mr. Girish Desai for Defendant No.1.
..

CORAM: DR. D.Y. CHANDRACHUD, J.

14th September, 2006.

P.C. :

On the oral request of counsel appearing for the First Defendant, leave granted to amend prayer clause (a) of the Notice of Motion. On the request of counsel appearing for the First Defendant, the name of Plaintiff No.2 who has already been deleted from the array of parties to the suit, is permitted to be deleted from the Motion.

On 22nd June, 2006 the suit was directed to proceed against the Defendants without their written statement. Thereafter

a Chamber Summons (Chamber Summons 806 of 2006) was taken out by the Defendants for condoning the delay in filing the written statement and for taking the written statement on the record. The Plaintiffs raised an objection on the ground that the Chamber Summons was not maintainable and that it was a Notice of Motion that would lie for making such a request. The objection was upheld by the learned Single Judge and the Chamber Summons was dismissed. Accordingly, a Notice of Motion has been taken out.

In the affidavit in support of the Notice of Motion, it has been stated that the writ of summons was served in September 1988. The suit appeared on Board on 20th November, 1990 when a direction was issued to the Defendants to file the written statement within eight weeks. The First Defendant has in the affidavit in support of the Motion stated that the written statement was in fact prepared and it was duly affirmed on 16th January, 1989 but, it remained to be filed only as a result of oversight on the part of the staff in the office of the advocate on record. The learned senior counsel appearing on behalf of the First Defendant has produced for the perusal of the Court a copy of the written

statement from which it appears that the written statement was in fact declared and affirmed on 16th January, 1989. In these circumstances, I am of the view that the ends of justice do warrant that the written statement should be permitted to be taken on the record and that the relief which has been sought in the Motion should be granted. This however should, in my view, be subject to the payment of costs which shall be a condition precedent. Accordingly, the Notice of Motion is made absolute in terms of prayer clause (a), subject to the payment of costs quantified at Rs.5,000/- which shall be a condition precedent. Costs to be paid to the Plaintiffs within a period of two weeks. The written statement to be filed in the registry subject to verification as regards payment of costs.

The suit to stand over by a period of two weeks.